

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 212 of 2016

STATE

V

SERUPI BABA

Counsel : Ms. R. Uce for the State.
: Ms. L. Vateitei for the Accused.

Dates of Hearing : 15, 16, 17 and 20 July, 2020
Closing Speeches : 21 July, 2020
Date of Summing Up : 21 July, 2020
Date of Judgment : 23 July, 2020
Date of Sentence : 06 August, 2020

SENTENCE

1. In a judgment delivered on 23rd July, 2020 this court found the accused guilty and convicted him for one count of murder as per the following information:

Statement of Offence

MURDER: contrary to section 237 of the Crimes Act 2009.

Particulars of Offence

SERUPI BABA, on the 12th day of March, 2016 at Nadi in the Western Division murdered **UNAISI BABA**.

2. The brief facts were as follows:

The accused and the deceased were husband and wife and together they have three children. On 12th March, 2016 the accused heard a rumour that his wife the deceased was having an affair, without verifying this rumour the accused went to the workplace of the deceased, lied to her that their son had been involved in an accident in Suva and brought her home.

3. At home the accused assaulted the deceased to teach her a lesson several times on her face and mouth until she fell sideways and hit her head on the floor. The accused also beat the deceased with a mango stick and an electrical wire he then left the house leaving the deceased in an unconscious state.
4. The deceased died at the CWM Hospital due to severe head injuries which caused a stroke on the left side of her brain and then septicemia due to bed sores. The accused was arrested, caution interviewed and charged.
5. Both counsel filed written sentence and mitigation submissions for which this court is grateful.
6. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused was 29 years of age at the time of the offending;
 - b) First offender;

- c) Looking after three children who are under 18 years;
- d) The accused has a construction business whereby he employs 26 people.

AGGRAVATING FACTORS

7. The following aggravating factors are obvious:

a) Unprovoked attack

The deceased did not do anything that would have provoked the accused, when confronted she denied having an affair and also told the accused not to believe such rumour, however, the accused continued with his assault. The accused also used a mango stick and an electrical wire to hit the deceased several times, in the process the mango stick broke.

b) Breach of Trust

The accused lied to the deceased to lure her home that their son had been involved in an accident in Suva and they had to visit him. The deceased trusted the accused and left her workplace to go home with the accused. The accused breached the trust of the deceased by his actions. The deceased was defenseless and vulnerable, the accused did not have any regard for the life of the deceased.

c) Planning

There is some degree of planning involved the accused had deliberately lied to the deceased so that she comes home and then with the intention of teaching her a lesson he started to assault her.

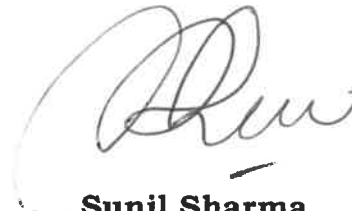
8. The penalty for the offence of murder is mandatory life imprisonment with a judicial discretion to impose a minimum term to be served before pardon may be considered. According to the court file the accused has been remanded for 15 days.
9. The sentencing regime for mandatory life imprisonment is different and unique since it is fixed by law which this court cannot interfere with. Accordingly, this court is stopped from undertaking the two tier sentencing approach which would be applicable to any sentencing other than mandatory life imprisonment under the guidelines mentioned in the Sentencing and Penalties Act.
10. The Court of Appeal in *Salesi Balekivuya and another vs The State, Criminal Appeal no. AAU 81 of 2011* at paragraph 40 confirmed the above as follows:

“... There is no basis for undertaking the approach described above when the head sentence is fixed by law. Furthermore there is no basis for proceeding to determine a non-parole period for a person sentenced to the mandatory life sentence for murder since the specific sentence provision of section 237 of the [Act] displaces the general sentencing arrangements set out in section 18 of the Sentencing and Penalties [Act]. In my judgment the reference to the court sentencing a person to imprisonment for life in Section 18 of the Sentencing [Act] is a reference to a life sentence that has been imposed as a maximum penalty, is distinct from a mandatory penalty...”

11. This court has discretion to determine the length of minimum term the accused must serve before he may be considered for a pardon. There are no guidelines as to what matters should be considered by the court in deciding whether to impose a minimum term or not and also the length of minimum term.

12. Mr. Baba you are a coward the unprovoked attack on the defenceless victim was gruesome, callous, and heartless. You left her lying in an unconscious state the assaults were so intense that your immediate neighbour was uncomfortable and afraid when she heard the screams of the deceased.
13. A family has lost a valuable member and your three children have lost their mother at a young age due to your selfish acts. Imagine the pain and suffering the deceased had to endure as a result of your assaults.
14. You cannot be forgiven for what you have done. An innocent life has been lost there is no justification for the taking away of another life in such circumstances. The purpose of a minimum term is to assure the community and the public at large that offenders for such an offence serve a definite and meaningful period of imprisonment. A murder committed with an intention to kill should attract a longer minimum term of imprisonment than murder by recklessness.
15. The accused is sentenced to mandatory life imprisonment for one count of murder with a minimum term of 18 years to be served before the accused may be considered for a pardon. In arriving at the minimum term this court has taken into account the mitigating factors and the remand period.
16. Before I leave, I would like to state that this case was a horrible example of an unresolved domestic issue resulting in tragedy. Gone are the days when domestic violence was considered to be a private affair, had the villagers and/or the neighbours intervened at an early stage I am sure the deceased would have been alive today or may not have been subjected to such high degree of assault.

17. The mindset of the society must change now domestic violence should no longer be treated as a private matter otherwise more deaths and serious harm will continue to hit the headlines which will erode the very fabric of the society. Domestic violence should be considered as everyone's concern now more than ever.
18. It is also recommended that the Commissioner of Corrections Services facilitate an anger management course for the accused.
19. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka
06 August, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.
Messrs Asta's Law, Sigatoka for the Accused.